



DEPARTMENT OF STATE

Washington, D.C. 20520

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KISS

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August 11, 1970

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MEMORANDUM FOR MR. HENRY A. KISSINGER
THE WHITE HOUSE

Subject: Transmission to the Senate for Advice and Consent to Ratification of the Geneva Protocol of 1925 Prohibiting Chemical and Biological Warfare

There are enclosed a Report by the Secretary of State and a Message by the President for the resubmission to the Senate, for its advice and consent to ratification, of the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, signed at Geneva June 17, 1925. This was requested in your memorandum to the Secretary of August 5, 1970. The Protocol was submitted to the Senate in 1926 but did not receive Senate approval and was returned to the Executive in 1947.

The Report and Message recommend that the Senate advice and consent be given with a reservation of the right to retaliate with chemical weapons, but no such reservation is recommended with respect to biological weapons. The Report indicates that the United States considers the term "bacteriological methods of warfare" used in the Protocol includes all biological methods of warfare and the use of toxins however produced.

The Report and Message reflect the position, which had previously been recommended by the Department to the White House, that the Senate be informed of the Administration's understanding that the United States does not consider the Protocol to prohibit the use in war of riot-control agents and chemical herbicides. It is not proposed that this understanding either be included in the Senate resolution of advice and consent or formally communicated to the parties to the Protocol.

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Chemical and Biological Warfare Research
August - December 1970

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The proposed submission to the Senate has been approved by the Arms Control and Disarmament Agency and coordinated with the Department of Defense.

Theodore L. Eliot Jr.

Theodore L. Eliot, Jr.
Executive Secretary

Enclosures;

Report and Message
accompanied by the
Protocol.

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DEPARTMENT OF STATE
WASHINGTON
August 11, 1970

The President:

I have the honor to submit to you, with the recommendation that it be transmitted to the Senate for advice and consent to ratification, the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, signed at Geneva June 17, 1925. The United States proposed the Protocol in 1925 and submitted it to the Senate in 1926. Although the Senate never voted on the question of ratifying the Protocol, which was returned to the President in 1947, the United States has always supported its principles and objectives and has pledged itself internationally to observe these principles. At present there are 85 parties to the Protocol, the most recent of which, Japan, became a party on May 21, 1970. The United States is the only major military power which is not a party.

Recent support of the principles and objectives of the Protocol was given by the United States in 1966, 1968 and 1969 at the United Nations. The United States has voted in the General Assembly for resolutions which called for "strict observance by all States of the principles and objectives of the Protocol" and invited "all States to accede to" the Protocol.

The Protocol prohibits the use in war of asphyxiating, poisonous or other gases, and of all analogous liquids, materials or devices and bacteriological methods of warfare. The Protocol is the basic international agreement in this field, and its principles have been

The President,

The White House.

observed in almost all armed conflicts since 1925 by parties and non-parties alike.

While the Protocol itself speaks in terms of flat prohibitions on the use of chemical and bacteriological agents in war, thirty-nine States (including France, the Union of Soviet Socialist Republics, and the United Kingdom) have ratified or acceded with reservations. The reservations of most of the reserving states assert that the Protocol is binding on them only with respect to other parties to the Protocol and limit the prohibitions to no first use.

It is proposed that the Senate give its advice and consent to ratification subject to a reservation as follows:

"That the said Protocol shall cease to be binding on the Government of the United States with respect to the use in war of asphyxiating, poisonous or other gases, and of all analogous liquids, materials or devices, in regard to an enemy State if such State or any of its allies fails to respect the prohibitions laid down in the Protocol."

This reservation would permit the retaliatory use by the United States of chemical weapons and agents, but would not limit in any way the Protocol's prohibition with respect to biological weapons.

Ratification of the Protocol as qualified by the proposed reservation would put the United States in the following position:

- unlike France, the Union of Soviet Socialist Republics, the United Kingdom, and most other reserving States, the United States would not assert by reservation a limitation of its obligations under the Protocol to the Parties thereto.

- like France, the Union of Soviet Socialist Republics, the United Kingdom, and other reserving States, the United States would reserve the right to use the prohibited chemical agents in retaliation against any enemy State if such State or any of its allies fails to respect the prohibitions laid down in the Protocol.

- unlike France, the Union of Soviet Socialist Republics, the United Kingdom, and all but one other reserving State, the United States would not assert by reservation the right to use bacteriological agents in retaliation.

It is the United States interpretation of the Protocol that it does not prohibit the use in war of riot-control agents and chemical herbicides. Smoke, flame, and napalm are also not covered by the Protocol.

The United States considers that the term "bacteriological methods of warfare" as used in the Protocol encompasses all biological methods of warfare and the use of toxins however produced.

The subject of arms control as it relates to chemical warfare and biological warfare is of continuing and increasing importance in the international field. At the 1969 summer session of the Conference of the Committee on Disarmament, the United Kingdom presented a draft convention establishing a comprehensive ban on the development, production, stockpiling, and use of biological methods of warfare. In accordance with your announcement of November 25, 1969 that the United States would associate itself with the principles and objectives of that draft convention, we have taken an active role in its negotiation. Other proposals on the subject of chemical and biological warfare have also been introduced in the United Nations General Assembly and the Conference of the Committee on Disarmament by other Governments.

Members of the Conference of the Committee on Disarmament have indicated the need for universal adherence to the Protocol as a condition precedent to agreement on more comprehensive measures.

The United States should become a party to the Protocol to strengthen the general prohibitions on the use of chemical warfare and biological warfare and to facilitate our participation in the formulation of new arms control provisions in this area.

Respectfully submitted,



Enclosures:

1. Certified copy of Protocol.
2. List of Parties and Reservations.

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C.B.